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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,389	10/02/2001	Donald J. Merkley	HARD1.015A	9683
20995	7590	02/03/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			HALPERN, MARK	
2040 MAIN STREET			ART UNIT	PAPER NUMBER
FOURTEENTH FLOOR				
IRVINE, CA 92614			1731	

DATE MAILED: 02/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/970,389	MERKLEY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Mark Halpern	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 18 January 2006.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 25-48 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 25-48 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/2/01; 4/16/02; 5/14/02

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

1) A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/18/2006, has been entered.

In Amendment received 1/18/2006, claims 25, 27, 44-48 are amended.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2) Claims 25-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over NAJI (6,030,447) in view of the ADMITTED PRIOR ART (APA)(Specification paragraph [0031] and Table 1) with or without WINGERSON (6,419,788). NAJI teaches a composite building material comprising cellulose fibers which reinforce the product (col. 2, lines 7-19, and an aggregate (siliceous material, Abstract), a density modifier (col. 2, line 21) and one or more additives (col. 2. lines 20-31). The APA teaches that conventional pulping and washing at temperatures (55-60 °C) results in cellulose fibers,

e.g. the cellulose fibers of NAJI, having a COD content of 5 kg/ton. In view that the claim does not specifically recite an elevated temperature in degrees centigrade, the temperature of APA is considered an elevated temperature. The claimed "less than 5 kg/ton" and in claims 44-48 "greater than 5 kg/ton" reads on 5 kg/ton of APA. The "less than 5.0 kg/ton", does not define over the washing of the APA or the product of NAJI. Also, WINGERSON teaches producing substantially pure cellulose (col. 3, line 56) by first treating cellulosic material with steam and then washing with alkaline hot wash water containing dissolved oxygen at elevated temperatures, e.g. 180 to 240 °C to remove decompose, mobilize and remove lignin, extractives and residual hemicellulose, e.g. the COD's. It would have been obvious to the artisan to further remove the COD's of NAJI and/or the APA using the elevated washing temperatures of WINGERSON. Such a washing would lower the COD's of NAJI to less than 5 kg/ton. It is noted that the instant process can also use oxidized wash liquor, e.g. the same wash water used by WINGERSON, see instant specification page 3, [0009].

***Response to Amendment***

3) Applicants' arguments filed 1/18/2006, have been fully considered but they are not persuasive.

Applicants allege that the cited prior art, NAJI, APA, WINGERSON, does not disclose washing at elevated temperature.

Since an elevated temperature is not disclosed in degrees centigrade, the

temperature of APA is considered an elevated temperature. Also WINGERSON discloses washing at elevated temperature.

Applicants allege that the cited prior art references does not disclose a COD content of "less than 5 kg/ton".

The claimed "less than 5 kg/ton" does not define over the washing of the APA or the product of NAJI.

### ***Conclusion***

4) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Halpern whose telephone number is 571-272-1190. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit: 1731

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Mark Halpern  
Primary Examiner  
Art Unit 1731